Supreme Court, U.S.
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No. 08-91

In The
Supreme Court of the United States

ELIZABETH STAUBER

and

JACK and TIMOTHY McGRATH,
Petitioners,

v.

JAMES McGRATH,
Respondent.

On Petition for Writ of Certiorari to the Fifth District Court of Appeals of Ohio

PETITIONERS' REPLY BRIEF

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October 3, 2008

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Constitutional Provision

Full Faith and Credit Clause 1, 2, 3

REPLY

Respondent discusses everything except the merits of the constitutional question. Instead of addressing the requirements that the Full Faith and Credit Clause imposes upon state courts, Respondent has made an *ad hominem* attack on Ms. Stauber and focused on arguments raised below that the Ohio Court of Appeals did not incorporate into its decision. By attacking Ms. Stauber's past, the response loses sight of the important constitutional principle that the Ohio court disregarded and the interests of the children who will benefit if the California orders are enforceable in Ohio. Indeed, this Petition seeks review not only on behalf of Ms. Stauber, but also on behalf of the children, who are beneficiaries of the California orders and whom DNA testing says with 99.99 percent confidence are the biological children of Respondent. [Pet. App. 7a].

Respondent's obsession with the personal history of one Petitioner should not sideline this Court's review of a longstanding open constitutional question. For example, Respondent's discussion of the *Saret-Cook* case (Resp. Br. at 19-20) has no relevance to the record of the case below. That discussion attacks one Petitioner's character; it does not address the interest of the twins in correcting the Ohio court's mistake, nor does it address the constitutional merit of this Petition. Moreover, significant constitutional issues rarely reach this Court in neat packages. The "watershed change in constitutional law" wrought by *Apprendi v. New Jersey* came to the court from a racially motivated shooting. 530 U.S. 466, 524, 120 S.Ct. 2348 (2000) (O'Connor, J., dissenting); *see id.* at

469 (describing the crime). One of the most significant commerce-clause cases in the last 50 years arrived at the Court because a high school student had been charged with bringing a gun to school. *United States v. Lopez*, 514 U.S. 549, 615, 115 S.Ct. 1624 (1995) (Breyer, J., dissenting) (stating his view that the challenged statute fell "well within the scope of the commerce power as this Court has understood that power over the last half century"); *see id.* at 551 (describing the crime).

The Ohio court, like other state courts in the past, has disregarded the full scope of the Full Faith and Credit Clause by inserting an exception that is inconsistent with the Court's statements about full faith and credit. The Ohio court's error will recur until this Court issues a definitive ruling explaining that the last-in-time rule is embedded in the Full Faith and Credit Clause.

Equally digressive from the constitutional principle at stake in this Petition is Respondent's argument that this Court cannot resolve the paternity issue that this litigation ultimately involves. Petitioners agree, and seek only a review of the Ohio court's erroneous application of the Full Faith and Credit Clause. The consequences of any ruling of this Court correcting the constitutional error are matters for the state court to decide.

Respondent's main legal argument repeats the mistake of the Ohio appellate court—attacking the California judgments collaterally. The opportunity to attack the California judgments passed when Respondent decided not to appeal in California,

because the Full Faith and Credit Clause sharply restricts collateral attacks on other states' judgments. Further, Respondent has not explained how Ms. Stauber's past relationships or her responses to the Ohio court orders somehow inhibited him in resisting or appealing the California support judgments.

Finally, Respondent's observation that most state courts agree with the interpretation of the Ohio appellate court does not diminish the importance of this Court's review. The long history of state court errors regarding full faith and credit will not change until this Court declares that the Clause embodies the last-in-time principle. The question is ripe for this Court's answer.

October 3, 2008

Respectfully Submitted,

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